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FILED
DISTRICT COURT OF GUAM
SEP 04 2002

MARY L. M. MORAN
CLERK OF COURT

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROLANDO VALENCIA MIRANDA,
Defendant.

Criminal Case No. 96-00097
Civil Case No. 02-00020

ORDER

This matter is before the Court on Defendant's, Rolando Valencia Miranda, Motion to Eliminate, Vacate, Reduce or Modify Fine. Finding no basis for the relief as requested, the Court DENIES the petitioner's motion.

I. FACTUAL BACKGROUND

Between on or about August 1996 through October 1996, the defendant participated in a conspiracy with Roland Abisia, and others to import 3,000 grams of crystal methamphetamine, "ice," from the Philippines into Guam for the purpose of distribution and profit. During the conspiracy, the defendant made numerous trips between the Philippines and Guam. The purpose of such trips was to transport large sums of United States currency from Guam to the Philippines. In addition, the defendant caused large shipments of "ice" to be flown from the Philippines to Guam, hidden inside styrofoam shipping containers aboard Continental Airline flights.

On October 8, 1996, the defendant was arrested. Thereafter, on March 14, 1997, the defendant

1 executed a formal written plea agreement pursuant to Fed. R.Crim. P. 11(e)(1)(C) with the government.
2 He pled guilty to importation of crystal methamphetamine, a.k.a. "ice", in violation of 21 U.S.C. §§ 952(a),
3 960 and 963. On May 18, 1998, the Court sentenced the defendant to 120 months imprisonment pursuant
4 to the plea agreement, five years of supervised release upon release from imprisonment and fined the
5 defendant \$17,500.00, the minimum fine in accordance with the Sentencing Guidelines. The defendant did
6 not appeal his sentence. On June 17, 2002, the defendant filed a Motion to Eliminate, Vacate, Reduce or
7 Modify Fine.

8 **II. DISCUSSION**

9 The defendant claims the Court improperly imposed a fine at his sentencing without making specific
10 findings as to his ability to pay. However, before the Court rendered its sentence, the Probation Officer
11 informed the Court that the defendant owned a number of assets and that he had been engaged in an
12 enterprise that resulted in the defendant reaping substantially large profits. Moreover, at the sentencing,
13 the government stated that the defendant before the Court was not the "same gentleman that was arrested
14 by the FBI . . . When he was initially arrested he had a Rolex watch and a diamond tennis bracelet."¹
15 There was a basis for the Court to find that the defendant could afford a fine.

16 A district court is bound to impose a fine within the Guidelines range "except where the defendant
17 establishes that he is unable to pay and is not likely to become able to pay any fine." *See* USSG §§
18 5E1.2(a), (f). Moreover, the defendant knew at the time of sentencing whether or not he would be able
19 to afford such a fine and the kind of burden it would place on his family. However, at no time during the
20 sentencing did the defendant pose an objection to the imposition of a fine.

21 Nor did the defendant file an appeal contesting the imposition of a fine. Again, the defendant was
22 aware of his financial circumstances at that time. However, instead of acting timely, the defendant waited
23 some thirty-six months too late to address the matter. And, now he is procedurally barred from raising such
24 a claim. "If a criminal defendant could have raised a claim of error on direct appeal but nonetheless failed
25 to do, he must demonstrate both cause excusing his procedural default and actual prejudice resulting from
26 the claim of error." United States v. Johnson, 988 F.2d 941, 945 (9th Cir. 1993), citing United States v.

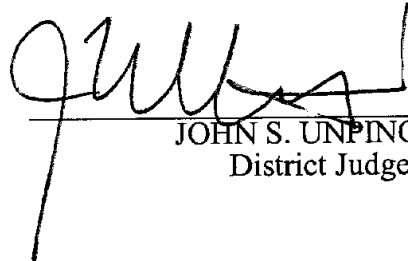
27 ¹United States v. Rolando Valencia Miranda, Case No. CR96-00097, Sentencing Hearing Transcript (May 18,
28 1998, page 27, lines 4-9).

1 Frady, 456 U.S. 152, 167-68, 102 S. Ct. 1584 (1982). Here, the defendant has neither shown cause nor
2 actual prejudice. Accordingly, the Court will not move to eliminate, vacate, reduce or modify the fine.

3 **III. CONCLUSION**

4 Because the defendant has failed to demonstrate both cause excusing his procedural default and
5 actual prejudice resulting from the claim of error, the Court finds no basis for relief as requested and
6 therefore **DENIES** the defendant's motion.

7 IT IS SO ORDERED, this 4th day of September, 2002.

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JOHN S. UNPINGCO
District Judge

Notice is hereby given that this document was
entered on the docket on 9-4-02.
No separate notice of entry on the docket will
be issued by this Court.

Mary L. M. Moran

Clerk, District Court of Guam

By: Marilyn P. Alan 9-4-02
Deputy Clerk Date